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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 03/18/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/701,760

Applicant(s)

CONKLE ET AL.

Examiner

Rodney P. Swartz, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☒ Claim(s) 2-14, 18-27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. Claims 1-27 are pending and under consideration.

Drawings

2. This formal drawings filed with the application have been reviewed by the Draftsperson and approved.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-6 are rejected under 35 U.S.C. 112, second paragraph, because claim 2 recites the limitation "the sodium sulphate" in line 3. There is insufficient antecedent basis for this limitation in the claim because claim 1, from which claim 2 depends, does not recite "sodium sulphate", but only "sulfates" or "sodium" Claims 3-6 depend from claim 2.

6. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 3 recites "The mixture of claim 2, further comprising: homogenizing the admixture by high intensity homogenization". It is unclear how homogenization adds more components to the mixture of claim 2. It appears to the examiner that the claim more likely should read "The method" of claim 2.

7. Claims 18-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites "sporulating the separated oocysts by the method of claim 14". However, claim 14 is drawn only to purification and recovery of encysted protozoa. Claims 19-27 depend from claim 18 and do not recite any sporulation methods.

8. Claims 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are drawn to a method which eliminates "unwanted" microbiological growth. However, neither the claim nor the instant specification defines what is "unwanted". Therefore, the claims are indefinite.

9. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claims are drawn to a method for the purification and recovery of encysted protozoa. None of the claims indicate which protozoa are encompassed by the claims, i.e., is the method for all protozoa which encyst? The specification also does not define the metes and bounds of which protozoa are included, except for possible microorganisms listed in Fig. 2 or the statement on page 9 that the encysted protozoa "can be" avian coccidial oocysts listed on lines 7-8.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by O'Grady et al (*Can. J. Comp. Med.*, 44:148-154, April 1980).

The instant claim is drawn to a method for the purification and recovery of encysted protozoa, comprising separating the protozoa by a salt flotation process where the salt comprises nitrates.

O'Grady et al teach a sodium nitrate flotation solution for separation of coccidial oocysts (Abstract; Materials and Methods, pp. 149-150).

12. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Davis et al (U.S. Pat. No. 4,544,548, 10/1985).

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The instant claim is drawn to a method for the purification and recovery of encysted protozoa, comprising separating the protozoa by a salt flotation process.

O'Grady et al teach a salt flotation process (Col. 7, lines 15-37) for recovery and purification of oocysts.

13. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Fuller et al (*J. Protozool.*, 36(2):143-146, 1989).

The instant claim is drawn to a method for the purification and recovery of encysted protozoa, comprising separating the protozoa by a salt flotation process.

Fuller et al teach a salt flotation process (Abstract; materials and methods, page 143) for recovery and purification of oocysts.

Claim Objections

14. Claims 2-14 and 18-27 are objected to because the claims depend from a rejected claim 1. Appropriate correction is required.

Conclusion

15. No claims are allowed.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

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If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-0196.



RODNEY P. SWARTZ, PH.D.
PRIMARY EXAMINER

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March 18, 2003